IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 817 OF 2000

Sharad Nanasaheb Chandgude .....Appellant.

versus

The State of Maharashtra ..... Respondents.

.....

Shri B.G.Tangsali advocate for the appellant-
appoionted.
mrs. P.H. Kantharia APP for State.

.....

CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 2ND NOVEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the Additional Sessions Judge, Baramati, in Sessions Case No.87 of 1995 under sections 302 & 309 of IPC on 17-6-1998 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution case as emerges from re-appreciation of the evidence stated briefly is that on 13-8-1995 the accused, according to prosecution, assaulted his wife Nirmala and thereafter assaulted himself. Nirmala died as a matter of that assault and the allegation of the prosecution is that the accused murdered her because of the fact that she did not serve him the lunch at the proper time.

4. The prosecution has examiend as many as 10 witnesses to prove its case, three of whom were examined as eye witnesses. The doctor has examined to prove homicidal death. Panchas are examined to prove the recovery. On appreciation of this evidence, the learned trial Judge came to the conclusion of guilt and sentenced the accused as aforesaid. It is this order of conviction, which is challenged in this appeal.

5. we have considered the reasoning of the trial court and we find that the evidence was grossly inadequate to permit conviction under section 302 of IPC.

6. We accept the entire prosecution evidence as was done by the learned trial Judge. P.ws. 1, 2 and 6

were cited and examined by the prosecution as eye witnesses. Each of them has turned hostile. There is therefore no eye witness account of how the assault took place. The prosecution has then examined P.ws. 3, 4 and 5 as panchas to prove recovery of koyta at the instance of the accused. These three panchas have also turned hostile and there is therefore no evidence of any recovery. However there is evidence of P.w.7 who is Special Executive Magistrate, and he recorded the dying declaration fo the accused and proved it in court as Exh.33. He has deposed before the court that on 13-8-1995 he was called by the police to record dying declaration. Therefore he went to rural hospital, Supa where the accused was lying in an injured condition. He enquired with Dr. Kore as to the capacity of the accused to give statement and he was told that the accused was conscious enough to give statement. He accordingly given his statement and recorded by him, which is proved by him in the court. That time when it was recorded, it was considered to be a dying declaration of the victim. However the accused did not surcome to the injuries which he inflicted himself on that day. It is therefore a statement made by the accused to SEM which he has proved in the court. This witness has very clearly deposed that as to what was told by the accused to him. The accused told the SEM

that he had beaten his wife because she has served the lunch late and that he tried to kill her. There is no reason that this testimony of the witness should not be accepted as proof of the entire prosecution case. The accused admits of giving a blow to the victim, his wife, and admits of giving blow to himself. The wife died and the accused did not. This evidence on record proves beyond doubt that the accused in a heat of anger assaulted his wife and then assaulted himself. There is no proof of any intention to commit murder. It was a clear case of sudden attack in the heat of anger because the wife delayed to serve the lunch. It cannot therefore be a case of murder under section 302 IPC particularly when the accused thereafter tried to kill himself. In fact the learned Judge finding this evidence acceptable has proceeded to convict the accused under section 309 IPC. In our opinion therefore, the learned trial Judge was wrong in convicting the accused under section 302 IPC. We therefore acquit the accused under section 302 IPC and instead convicting him under section 304-I for causing homicidal death, not amounting to murder. In our considered opinion, there is no evidence whatsoever of any intention or motive on the part of the accused to commit murder of his wife.

7. It has come on record that since the date of incident the accused is in custody. He has thus undergone imprisonment for more than 9 years. We therefore convict the accused under section 304-I IPC for causing injuries of culpable homicide, not amounting to death, inflicted by him on his wife and sentencing him to suffer imprisonment for 9 years. That period having been undergone by the accused, we direct that he be released forthwith if not otherwise reqired for any other offence.

xxxx